

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding on)
Communications, Including an)
Investigation of the)
Communications Infrastructure)
of the State of Hawaii.)
_____)

DOCKET NO. 7702

ORDER NO. 22569

Filed June 29, 2006
At 9:30 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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Commission, State of Hawaii.

K. Higashi

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ORDER

By this Order, the commission dismisses the issue of VERIZON HAWAII INC. ("Verizon Hawaii"), nka HAWAIIAN TELCOM, INC.'s ("Hawaiian Telcom")¹ recovery of operations support systems ("OSS") transition, OSS transaction, and national market center ("NMC") shared and fixed costs ("OSS/NMC Issue"), for the reasons set forth below.

I.

Background

OSS transition costs are one-time startup costs associated with providing competitive local exchange carriers

¹Hawaiian Telcom was formerly known as Verizon Hawaii, which in turn was formerly known as GTE Hawaiian Telephone Company Incorporated. Verizon Hawaii became Hawaiian Telcom as a result of a conditionally approved transfer of control of the entity from Verizon Communications Inc. and its various subsidiaries (Seller-Applicants, collectively referred to as "Verizon") in 2005, to an affiliate corporation ultimately controlled by TC Group L.L.C., dba The Carlyle Group (Buyer-Applicant, "Carlyle"). See In re Paradise MergerSub, Inc., et al., Docket No. 04-0140, Decision and Order No. 21696, filed on March 16, 2005 ("Decision and Order No. 21696").

("CLECs") access to Verizon's OSS functionalities and services such as Pre-Ordering, Ordering, Provisioning, Repair and Maintenance, Billing and Usage. Specifically, OSS transition costs are costs that were incurred to transition Verizon's OSS from a system that only it was able to access to a system that is also accessible by CLECs.

OSS transaction costs are costs incurred each time a CLEC places an order through the OSS. They are on-going costs that Verizon incurs due to OSS access by CLECs.

NMC costs are costs associated with the establishment of the three (3) NMC offices in Durham, North Carolina; Coeur d'Alene, Idaho; and Fort Wayne, Indiana, for the purpose of processing CLEC orders, including those from Hawaii.

Hawaiian Telcom seeks to recover Verizon Hawaii's OSS transaction, OSS transition and NMC costs (collectively, "OSS/NMC Costs").

A.

Procedural History

By Decision and Order No. 19018, issued on November 15, 2001 ("Decision and Order No. 19018"), the commission considered the issue of Verizon Hawaii's recovery of OSS/NMC Costs. The commission found that Verizon Hawaii had not "sufficiently validated the level of recovery it is currently seeking for OSS transition, OSS transaction, and [NMC] shared/fixed costs" and as such, the commission was "unable to determine whether the proposed level of cost recovery for these cost categories were

reasonably incurred, and whether requiring the recovery of these costs would be just, reasonable, and non-discriminatory."² The commission, moreover, was "uncertain as to what cost categories, if any [we]re reasonably recoverable."³ Thus, the commission disallowed recovery of Verizon Hawaii's OSS and NMC costs and deferred determining the appropriate mechanism for recovery "until applicable, if at all."⁴ The commission, however, stated that if Verizon Hawaii wished to pursue recovery of these costs it must file a full statement of justification and a detailed accounting for each OSS/NMC cost element that it is seeking to recover within six (6) months of the issuance of the decision and order. The commission specified that the filing must demonstrate that the costs: (1) were incurred to provide the highest available quality of CLEC access to the OSS functionalities; (2) pertain to services to Hawaii's CLECs; and (3) were not being recovered in any other rates or charges.⁵

Verizon Hawaii filed a revised OSS/NMC Cost study on May 17, 2002.⁶ By Order No. 19405, filed on June 7, 2002, the commission established a schedule for the filing of comments regarding Verizon Hawaii's OSS/NMC Cost study. In accordance with the prescribed schedule, the UNITED STATES DEPARTMENT OF

²See Decision and Order No. 19018 at 18.

³Id. at 20.

⁴Id.

⁵Id. at 20-21.

⁶Verizon Hawaii received an extension of time to file its OSS/NMC Cost study from May 15, 2002, to May 17, 2002, on May 16, 2002.

DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES ("DOD") and AT&T COMMUNICATIONS OF HAWAII, INC. ("AT&T") filed comments on the OSS/NMC Cost study on September 4 and 5, 2002, respectively; and Verizon Hawaii filed its response to the DOD and AT&T's comments on November 4, 2002.

On June 21, 2004, Verizon Hawaii, Verizon, and Carlyle filed a joint application for commission approval of a proposed transfer of control of Verizon Hawaii from Verizon to Carlyle. The transfer was subsequently conditionally approved in Decision and Order No. 21696.

By Order No. 21677, filed on March 9, 2005 ("Order No. 21677"), the commission requested that the parties⁷ to this docket review and consider outstanding issues in this docket and the effect of recent developments on such outstanding issues, and file a stipulation or position statements, as appropriate, discussing those issues. One (1) of the three (3) outstanding open issues identified by the commission was the OSS/NMC Issue.⁸ Specifically, the parties were to discuss the following:

⁷The parties actively participating in this phase of the docket are: Hawaiian Telcom; the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"); TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS ("Oceanic"); DOD; and PACIFIC LIGHTNET, INC. ("PLNI") (collectively, the "Parties").

AT&T and SPRINT COMMUNICATIONS COMPANY, L.P., also parties to Docket No. 7702, are not actively participating in this phase of the docket.

⁸Along with the OSS/NMC Issue, the commission specifically identified the other Open Issues as: (1) the establishment of rates for DC and backup DC power for adjacent on-site collocation ("DC Power Issue"), and (2) the wholesale NRC study and proposed rates filed by Hawaiian Telcom on December 21, 2001 ("NRC Issue").

1. Whether the Federal Communications Commission's ("FCC") Triennial Review Order ("TRO")⁹ and Triennial Review Remand Order ("TRRO")¹⁰ (collectively, "FCC Orders") and the matters of Docket No. 04-0140 affected the Open Issues and existing filings made in this docket;
2. Whether any of the Open Issues still needed to be addressed and resolved for the advancement of Hawaii's telecommunications market, at this time; and
3. If so, what are the appropriate procedures to update the filed information for the commission's consideration and resolution of the Open Issues.

The commission also required the Parties to file a stipulation memorializing any agreements reached during the informal discussions, if any, or file separate position statements setting forth their respective positions, within sixty (60) days of the issuance of Order No. 21677.¹¹

⁹The FCC's TRO established new rules governing the obligations of incumbent local exchange carriers ("ILECs") to make elements of their network available on an unbundled basis to CLECs. See In Re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability; CC Docket Nos. 01-338, 96-98, and 98-147; Report and Order and Order on Remand and Further Notice of Proposed Rulemaking; FCC No. 03-36; Adopted February 20, 2003; Released August 21, 2003.

¹⁰On December 15, 2004, the FCC adopted "new" rules concerning an ILEC's obligations to make elements of its network available to competitors. See In Re Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; WC Docket No. 04-313, and CC Docket No. 01-338; Order on Remand; FCC No. 04-290; Adopted December 15, 2004; Released February 4, 2005.

¹¹On April 7, 2005, Hawaiian Telcom filed a letter on behalf of the Parties requesting commission approval to submit, by July 8, 2005, an update on how much additional time the Parties will need to comply with Order No. 21677 ("Extension Request"). The commission approved the Extension Request in Order No. 21766, filed on April 22, 2005. On July 8, 2005, the Parties submitted

B.

Parties' Stipulation

On September 9, 2005, the Parties filed a stipulation, in accordance with Order No. 21677 ("Stipulation"). In their Stipulation, the Parties stated that they had reached an agreement on the disposition of two (2) of the three (3) Open Issues and had come to an agreement regarding the procedures to resolve the third, the OSS/NMC Issue.¹²

their proposed stipulated order, setting forth their agreement to submit the following by September 2, 2005: (1) their stipulation regarding the Open Issues; and (2) procedures to address any issue(s) in dispute. On July 15, 2005, the commission approved the Parties' proposed stipulated order by issuing Stipulated Order No. 21917.

On September 2, 2005, Hawaiian Telcom, on behalf of the Parties, submitted a letter requesting an extension until September 9, 2005, to submit their filing in accordance with Stipulated Order No. 21917. The commission approved the Parties' September 2, 2005 extension request through a letter dated September 7, 2005.

¹²With regard to the DC Power Issue, the Parties agreed that neither the FCC Orders nor the matters of Docket No. 04-0140 appear to affect pricing of DC power for adjacent on-site collocation. The Parties agreed to develop DC power rates for adjacent on-site collocation on a case-by-case basis through the individual case basis process and agreed on procedures to resolve any disputes that may arise.

The Parties also agreed that the FCC Orders and the matters of Docket No. 04-0140 may affect the NRC Issue. Nonetheless, the Parties stipulated to continue to utilize the interim NRCs that the commission approved in Order No. 18230, filed on December 6, 2000, as amended by Order No. 18236, filed on December 8, 2000, and to eliminate the true-up mechanism.

The Parties also agreed that "any [p]arty may petition the [c]ommission to review the reasonableness of proposed changes necessitated either by the TRO/TRRO or the matters addressed in Docket No. 04-0140 in a separate docket . . . [and that] individual carriers may address this issue in negotiations with Hawaiian Telcom, whether in the context of seeking an amendment to a current interconnection agreement or negotiating a new agreement." See Stipulation at 4.

With respect to the OSS/NMC Issue, the Parties agreed that the FCC Orders do not appear to impact the issue. They were, however, unable to agree: (1) on whether the commission must address and resolve the OSS/NMC Issue for the advancement of competition in Hawaii, and (2) to what extent, if any, Docket No. 04-0140 affected the OSS/NMC Issue. Thus, the Parties agreed to file their respective positions on whether the OSS/NMC Issue needed to be addressed and resolved for the advancement of competition in Hawaii, with the commission on or by September 30, 2005, and agreed that whether or not they must develop a procedural schedule to substantively address the OSS/NMC Issue is dependent on the commission's determination of this initial threshold issue.

On September 23, 2005, the commission issued Order No. 22047 approving the Parties' Stipulation.

C.

Briefing on OSS/NMC Issue

1.

Hawaiian Telcom's Position

On September 30, 2005, Hawaiian Telcom filed its Position Statement In Support Of The Commission's Addressing And Resolving Hawaiian Telecom's Proposal To Recover Its OSS/NMC Costs ("HT's Statement"). It contends that resolution of the OSS/NMC Issue is necessary for the continued advancement of competition in Hawaii, and that the commission can and should

resolve the matter based on the existing record without any further updates and proceedings.

Hawaiian Telcom argues that, as an ILEC, it incurred costs to allow CLECs access to its OSS functions and activities in a non-discriminatory manner, pursuant to the requirements of the federal Telecommunications Act of 1996 (the "Act"). It contends that the Act and the FCC's rules permit recovery of OSS related costs. Hawaiian Telcom further states that past commission decisions support recovery of these costs and that the commission noted that the "parties [to this proceeding] did not disagree that Hawaiian Telcom is entitled to recover the non-recurring charges it incurs when processing orders for UNEs [unbundled network elements] and wholesale services for CLECs."¹³

Hawaiian Telcom claims that it must be allowed to recover its OSS/NMC costs, which it would not have incurred but for the Act and which only benefit its competitors. It argues that Hawaiian Telcom's ratepayers will be unjustly burdened if it is not allowed to recover its OSS/NMC costs from the CLECs that caused the costs to be incurred. Hawaiian Telcom states that the "significant delay" in allowing recovery for its incurred OSS/NMC costs "resulted in a windfall for the CLECs that have essentially been given a 'free ride' at the expense of Hawaiian Telcom and its ratepayers."¹⁴ It argues that Hawaiian Telcom has already been harmed to the extent that no recovery for the OSS/NMC costs has been ordered, and contends that this regulatory imbalance

¹³See HT's Statement at 5 (citing Decision and Order No. 16775 at 43).

¹⁴Id.

should not be allowed to continue. Hawaiian Telcom claims the current delay in cost recovery hurts competition in Hawaii by continuing an "asymmetrical regulatory environment."

Hawaiian Telcom states that the record on this issue is complete and that all parties to this proceeding were given ample opportunities to provide comments. Accordingly, it recommends that the commission approve its cost recovery proposal filed on May 17, 2002, without further proceedings.

2.

Consumer Advocate's Position

On September 30, 2005, the Consumer Advocate filed its Statement of Position ("CA's Statement") asserting that the OSS/NMC Issue does not need to be addressed and resolved by the commission at this time as Hawaiian Telcom failed to demonstrate that it required cost recovery to effectively compete in Hawaii's telecommunications market. If the commission finds otherwise, the Consumer Advocate argues that it is opposed to the OSS/NMC cost recovery filed on May 17, 2002, since a majority of the costs appear to have been incurred and expensed by Verizon Hawaii in prior years. Moreover, it states that the OSS/NMC cost recovery proposal filed in 2002 is not representative of the cost levels that are expected to be incurred by Hawaiian Telcom as a stand alone company and recommends that the commission require the filing of updates and further proceedings.

Relying on Order No. 21677, the Consumer Advocate argues that there must be a showing that non-resolution of the

OSS/NMC Issue would impair Hawaiian Telcom's ability to effectively compete in Hawaii's telecommunications market. The Consumer Advocate states that Hawaiian Telcom has, to date, failed to provide any documentation or analysis to support a claim that lack of OSS/NMC recovery prevents it from competitively pricing its services. The Consumer Advocate also states that Hawaiian Telcom has failed to show that lack of OSS/NMC cost recovery prevents it from generating sufficient earnings to attract capital needed to sustain its operations.

Additionally, the Consumer Advocate contends that all telecommunications carriers are required to incur costs to provide services that they are certified by the commission to provide in the State and that they price their services at a level that allows them to recover their costs to provide the services and to effectively compete. The Consumer Advocate argues that Hawaiian Telcom would have sought commission action to resolve a situation where it was unable to price its services at a level to allow it to recover its operational costs since not doing so would affect its ability to sustain long-term operations. The Consumer Advocate asserts that Hawaiian Telcom has not made a formal request for resolution of the OSS/NMC Issue since November 2002, and that "[g]iven the passage of approximately three years during which [Hawaiian Telcom] has not been able to recover the costs, it is difficult to appreciate how [Hawaiian Telcom] can now claim that it is entitled to cost recovery in order to remain competitive in the State's

telecommunications market."¹⁵ It argues that Hawaiian Telcom's lack of action regarding the OSS/NMC Issue indicates that there is no need to recover the OSS/NMC Costs for Hawaiian Telcom to remain competitive in the State's telecommunications market, and, thus, the Consumer Advocate asserts that the OSS/NMC Issue need not be addressed and resolved at this time.

Furthermore, the Consumer Advocate argues that Hawaiian Telcom's claim that it is entitled to recover OSS/NMC Costs on behalf of Verizon Hawaii is not reasonable and should not be accepted by the commission. Based on the applicable financial statements for the years 1999 through 2003, the Consumer Advocate states that it found no record that the OSS/NMC Costs were deferred for future cost recovery pending commission decision and surmised that these costs were written off as expenses in the years they were incurred. Without a deferral of these costs, the Consumer Advocate contends that any attempt to seek cost recovery of prior year's expenses would be unreasonable since it would be akin to retroactive ratemaking.¹⁶ Further, the Consumer Advocate contends that without a deferral of the one-time OSS and NMC costs, Hawaiian Telcom cannot sustain

¹⁵See CA's Statement at 6.

¹⁶The Consumer Advocate also states that allowing Hawaiian Telcom an opportunity to recover these costs may result in allowing it to "receive a benefit twice - once through the tax write off due to the expensing of the costs and lower income tax expense, and a second time through the cost recovery of the amounts from ratepayers." See CA's Statement at 8.

the argument that it acquired the right to future cost recovery of the one-time OSS transition and NMC costs.¹⁷

3.

DOD's Position

In its Position Statement filed on September 30, 2005, the DOD contends that the OSS/NMC Issue became moot on May 2, 2005, the effective date of the sale of Verizon Hawaii to Carlyle when Verizon Hawaii became Hawaiian Telcom. In short, the DOD states that the OSS/NMC Issue became moot since Hawaiian Telcom did not incur the OSS/NMC Costs that Hawaiian Telcom is seeking to recover and since Hawaiian Telcom is not planning to use the OSS and NMC that Hawaiian Telcom, as Verizon Hawaii, had contemplated in its May 17, 2002 filing.

The DOD insists that Hawaiian Telcom is now a stand-alone company and that Verizon did not convey to the new owners of Hawaiian Telcom any of the assets related to OSS/NMC services. The DOD also argues that Hawaiian Telcom, as Verizon Hawaii, did not incur any of the OSS/NMC Costs set forth in its May 17, 2002 filing and that the OSS/NMC Costs in question

¹⁷Among other things, the Consumer Advocate also contends it would be unreasonable to base any cost recovery for OSS transaction and on-going NMC fixed and shared costs on analysis filed on May 17, 2002, since Hawaiian Telcom will cutover from Verizon's OSS to its new back-office systems, after a transitional period, and the filed OSS/NMC Cost study reflects the costs of systems and resources that will not be used to process CLEC orders. The Consumer Advocate states that it would also be unreasonable to base any cost recovery on costs that are expected to be reduced through use of more effective systems, as Hawaiian Telcom represented in Docket No. 04-0140. See CA's Statement at 10.

were owned and incurred by mainland Verizon subsidiaries.¹⁸ It states that the OSS/NMC Costs were merely allocations of the historic costs of other Verizon subsidiaries to Hawaiian Telcom and that these cost allocations became irrelevant upon the sale of the company.

The DOD also states that after a transitional period, Verizon's NMC and OSS will not be serving Hawaii's CLECs or its ratepayers. Thus, the DOD argues that the commission should not consider whether Verizon's mainland NMC and OSS historic costs are recoverable by Hawaiian Telcom under the principle that no ratepayer should be obligated to pay for costs that are not used and useful for the provision of utility services.

Moreover, the DOD asserts that the OSS/NMC Issue has no current or potential effect on the advancement of competition in Hawaii's telecommunications market. The DOD based this statement on the assurance provided by the Docket No. 04-0140 applicants that there will be a smooth and seamless transition from Verizon Hawaii to Hawaiian Telcom. The DOD maintains that there was no suggestion by the Docket No. 04-0140 applicants that a resolution of the OSS/NMC Issue is necessary for a smooth and seamless transition, and that there was no suggestion "at any time that this issue casts any shadow over the willingness or ability of either party to provide interconnection service to

¹⁸Among other things, the DOD states that all three (3) NMCs are all located on the mainland and contends that "[v]irtually all of the OSS/NMC costs were incurred on the [m]ainland, where Hawaiian Telcom has no operations." See DOD's Statement at 6.

CLECs operating in Hawaii."¹⁹ Accordingly, the DOD asserts that non-resolution of the OSS/NMC Issue will not threaten Hawaii's telecommunications market in any manner.

4.

PLNI and Oceanic's Joint Position

On September 30, 2005, PLNI and Oceanic filed their Joint Position Statement ("Joint Statement") informing the commission that they believe that the OSS/NMC Issue need not be addressed and resolved at this time since no positive effect on competition would result from allowing Hawaiian Telcom to recover OSS/NMC Costs, as it proposed.

PLNI and Oceanic state that the OSS and NMC costs at issue are costs that Verizon incurred to establish functionalities for ordering and providing services for CLECs.²⁰ They contend that CLECs incurred associated costs to develop their own electronic interfaces to access and use Verizon's OSS. PLNI and Oceanic argue that allowing Hawaiian Telcom to recover OSS and NMC costs from CLECs would not advance competition in Hawaii's telecommunications market since it will result in CLECs paying for their own costs and a portion of the ILEC's costs.

¹⁹See DOD's Statement at 8.

²⁰PLNI and Oceanic state that since the filing of the initial request to recover OSS/NMC Costs in Hawaii, serious concerns have been raised by other state commissions regarding similar Verizon subsidiaries' filings in other states. PLNI and Oceanic point to cost recovery proceedings held in Rhode Island and Indiana wherein their respective commissions have either rejected or declined to rule on Verizon subsidiaries' OSS/NMC Cost recovery requests. Additional information regarding these other state proceedings are provided on pages 2 and 3 of the Joint Statement.

PLNI and Oceanic also argue that competition in the telecommunications market in the State of Hawaii will not be advanced by allowing Hawaiian Telcom to charge Hawaii CLECs for an OSS system that will no longer be used, since upon completion of Hawaiian Telcom's transition from Verizon's systems, the OSS systems in question will be replaced by Hawaiian Telcom's new back office systems.

Moreover, PLNI and Oceanic state that "[a]s a practical matter, Verizon Hawaii's failure to secure its desired OSS/[NMC] cost recovery for the years 1996-2001 was or should have been reflected in the final sale price of Verizon Hawaii, and any recovery at this point of those historical costs would result in a windfall to Hawaiian Telcom that could be used to impermissibly force the CLECs to finance Hawaiian Telcom's new back office."²¹ They assert that Hawaiian Telcom is not permitted to recover transition and transaction costs resulting from the sale of the company, including the establishment of its back office systems in Hawaii, pursuant to a regulatory condition of the commission's conditional approval of the transfer and that with the establishment of Hawaiian Telcom's new back office systems, CLECs will need to incur their own costs to interface with the new systems.

PLNI and Oceanic argue that advancement of competition in Hawaii is improved where all competitors, whether ILEC or

²¹See Joint Statement at 5.

CLEC, bear their own costs for complying with regulatory requirements.²²

II.

Discussion

A.

Recovery of OSS/NMC Costs Is Not Necessary for the Advancement of the State's Telecommunications Market

At issue in this Order is whether Hawaiian Telcom's recovery of OSS/NMC Costs is necessary for the advancement of Hawaii's telecommunication's market. Hawaiian Telcom appears to contend that the matters of Docket No. 04-0140 have no effect on the OSS/NMC Issue based on its recommendation that the commission can and should resolve the OSS/NMC Issue without further updates and proceedings, and its argument that resolution of this issue is necessary for the advancement of competition in the State's telecommunications market. On the other hand, the non-ILEC Parties appear to all agree that Verizon's sale of its Hawaii affiliate to Carlyle substantially and materially impacts the OSS/NMC Issue and practically makes the OSS/NMC Issue, as currently filed, irrelevant. Furthermore, the non-ILEC Parties all state, in some form, that the OSS/NMC Issue need not be resolved for the advancement of competition in the State's telecommunications market.

²²PLNI and Oceanic also suggest that advancement of competition would require that any further review of Hawaiian Telcom's OSS/NMC Cost recovery be joined with a similar review of the costs incurred by CLECs to interface with Hawaiian Telcom's OSS.

Upon review, the commission finds Hawaiian Telcom's position regarding the OSS/NMC Issue unpersuasive. Hawaiian Telcom merely states that its ratepayers will be "unjustly burdened" if it is not allowed to recover its OSS costs and that without recovery a regulatory imbalance will continue. Aside from these bald statements, Hawaiian Telcom did not provide any support for its claim that lack of OSS/NMC Cost recovery forestalled it from competing in the telecommunications market in any manner; how and to what extent ratepayers would be burdened; and how and to what extent lack of recovery impairs the advancement of competition in this market. These matters are of special concern since, Hawaiian Telcom agreed in Docket No. 04-0140 that it would not file for a general rate increase prior to 2009 (absent a finding of a compelling financial need) and assured the commission that the transition from Verizon Hawaii to Hawaiian Telcom would be smooth and seamless.²³ Hawaiian Telcom did not condition its representations and agreements in Docket No. 04-0140 on OSS/NMC Cost recovery.

In addition, any form of cost recovery would not only have to be consistent with the Act and FCC rules but would be based on a finding that cost recovery is reasonable and consistent with the public interest. At this time, however, it would be unreasonable and inconsistent with the public interest for the commission to make such a determination regarding the OSS/NMC Issue due to, among other things, the significant impact of Docket No. 04-0140, which significantly changed the basis on

²³See Decision and Order No. 21696 at 18-19, 29-30.

which the OSS and NMC costs were proposed in Hawaiian Telcom's May 17, 2002 filing. Accordingly, at this time, the commission has significant concerns and doubts regarding the validity, applicability and reasonableness of the current OSS and NMC costs filed with the commission.

While Hawaiian Telcom contends that the OSS/NMC Costs were incurred, and, thus, cost recovery is needed, it does not dispute the non-ILEC Parties' characterization that the OSS and NMC costs filed on May 17, 2002, are allocations of costs incurred by Verizon nationally and that assets for these services were never owned by Hawaiian Telcom.²⁴ Additionally, the OSS and NMC costs currently filed with the commission are costs for Verizon's systems; systems that are not used by Hawaiian Telcom to provide services in the State since cutover from Verizon's OSS to its newly built back-office systems, which occurred on April 1, 2006.

Moreover, the non-resolution of the OSS/NMC Issue was apparent throughout the course of Docket No. 04-0140, and, thus, it is reasonable to assume that the open status of this issue was reflected in the final sale price of Verizon Hawaii, since there was no indication in Docket 04-0140 that the sale was contingent on the resolution of the OSS/NMC Issue. Furthermore, it is doubtful that Hawaiian Telcom is entitled to recover OSS/NMC costs given the Consumer Advocate's analysis of Hawaiian Telcom's financial records; which it contends indicate that much of the OSS and NMC costs in question were not deferred for future

²⁴See DOD's Statement at 6; CA's Statement at 6.

recovery, but were apparently expensed in the years they were incurred.

Based on the above, the commission finds that the OSS/NMC Issue does not need to be addressed and resolved at this time for the advancement of competition in the State's telecommunications market. Accordingly, the commission finds it reasonable and in the public interest to, at this juncture, dismiss the OSS/NMC Issue.²⁵

B.

Performance Standards Issue

As the commission is dismissing the OSS/NMC Issue, the only issue remaining in this docket is the issue of performance standards articulated in connection with the Verizon sale in Decision and Order No. 21696, filed on March 16, 2005, in Docket No. 04-0140.²⁶ In that docket, Oceanic and PLNI requested that the commission establish appropriate remedies if Hawaiian Telcom fails to comply with specific performance standards and Oceanic requested that the commission establish Hawaii Specific Performance Standards. The commission, however, considered it more appropriate to address those issues in this

²⁵This is not a decision on the merits and, as such, does not preclude Hawaiian Telcom from filing for cost recovery of appropriate and relevant OSS and OSS related costs in the future. However, any such filings should be made in a new and separate proceeding.

²⁶See Decision and Order No. 21696.

docket, as the current performance standards set forth in the Joint Partial Settlement Agreement were approved in this docket.²⁷

Also, in Decision and Order No. 21696, the commission stated that it would initiate an investigation regarding service quality levels and standards approximately six (6) months after cutover from Verizon to Hawaiian Telcom. The commission indicated that in the commission's service quality proceeding, it would:

(1) review and update the current service quality standards that are in place; (2) investigate the need to impose any new standards, requirements, and programs such as, for example, a vegetation management program; (3) determine whether and to what extent service quality levels were impacted by the effectuation of the proposed Merger Transaction; (4) consider the establishment of a mechanism or procedures to impose reasonable and appropriate penalties and fines if Hawaiian Telcom fails to meet established service quality standards; and (5) any other related issues and matters, as deemed necessary.²⁸

As the commission will be initiating an investigation into service quality, it would be appropriate given the circumstances to address the performance standards issue in the service quality investigation. Accordingly, the commission will address the performance standards issue in the service quality investigation. As there are no remaining issues left to be resolved in this docket, the docket should be closed.

²⁷Id. at 37 (citing Order No. 20561, filed on October 7, 2003, in Docket No. 7702).

²⁸Id. at 46-47.

III.

Orders

THE COMMISSION ORDERS:


1. The OSS/NMC Issue is dismissed.
2. The performance standards issue articulated in Decision and Order No. 21696, filed on March 16, 2005, in Docket No. 04-0140, will be addressed in the service quality investigation that the commission will initiate.
3. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii JUN 29 2006.

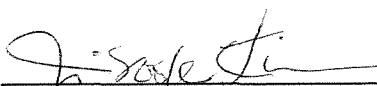
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22569 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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